

आयकरअपीलीयअधिकरण, मुंबईन्यायपीठ‘बी’मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL“B” BENCH, MUMBAI

श्री जी.एस.पन्नू, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI G.S.PANNU, AM AND SHRI AMARJIT SINGH, JM

आयकरअपीलसं/I.T.A. No.2479/Mum/2014, I.T.A.2480/Mum/2014,
I.T.A.2481/Mum/2014 & I.T.A.2813/Mum/2014
(निर्धारणवर्ष / Assessment Year: 2001-02, 2002-03, 2003-04 & 2004-05)

ITO (TDS) 2(3) R. No. 708, 7 th Floor, Smt. K.G.Mittal Ayurvedic Hospital Building, Charni Road, Mumbai - 400002	बनाम/ Vs.	M/s. Marmo Classic 15, Bhandup Village Road, Next to Ceat Tyre Factory, Subhash Nagar, Bhandup(W), Mumbai - 400078
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No. : MUMM14890B		
(अपीलार्थी/ Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by:	Shri Mohammed Rizwan
Assessee by:	Shri A.N.Shah

सुनवाईकीतारीख / Date of Hearing: 18.10.2016
घोषणाकीतारीख /Date of Pronouncement: 25.01.2017
आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the above mentioned appeals against the order dated 24.01.2014 passed by the Commissioner of Income Tax (Appeals)- 13, Mumbai [hereinafter referred to as the “CIT(A)”]

relevant to the assessment year 2001-02, 2002-03, 2003-04 & 2004-05.

ITA NO.2479/Mum/2014:-

2. The revenue has raised the following grounds:-

- “i. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in giving relief to the assessee by holding that TDS is not deductible on payment made to Custom House Agents (CHA) on account of reimbursement of ‘Clearing and Forwarding Charges’ without properly appreciating the factual and legal matrix of the case as clearly brought out by the A.O. in order u/s.201(1)/201(1A) of the Income Tax Act, 1961.*
- ii. On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in holding that the assessee was under no liability to deduct tax u/s.194I of Income Tax Act 1961 and deleting the non/short deduction under the head ‘Exhibition Charges’ determined by the AO u/s.201(1) of the Act without appreciating the fact that the definition of rent stands amended with effect from 13.07.2006. The AO was correct in holding the assessee as assessee in default within the provisions of section 194I in his order u/s.201(1)/201(1A) of the Income Tax Act, 1961.*
- iii. On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in not appreciating the fact that the AO, while considering the assessee in default u/s.194I of the Act, had only considered the ground rent and not the entire amount of expenses debited under the head ‘Exhibition Charges’.*

3. The brief facts of the case are that the assessee company i.e. M/s.Marmo Classic was engaged in the business of marble trading. A survey action u/s.133A of the Income Tax Act, 1961(in short “the

Act”) was conducted at the premises of the assessee on 22.12.2003 in order to verify where the assessee company properly complied with the provisions contained in Chapter XVIIB of the Act. During the survey action u/s.133A of the Act, statement on oath of Shri Sanjay Khandelwal, accountant of the assessee company was recorded u/s.131 of the Act. In view of the verification as well as the statement recorded by the Assessing Officer, he was of the view that the assessee was under obligation to deduct the TDS to the tune of Rs.1,13,22,000/- on clearing and forwarding charges u/s.194J of the Act, therefore, the tax and interest was worked out to the tune of Rs.8,38,416/- and added to the income of the assessee. It was also noticed that the exhibition charges were also subject to TDS u/s.194I of the Act of Rs.11,03,217/-. Since the tax was not deducted, hence the tax and interest was worked out to the tune of 1,19,745/-, therefore, the said amount was added to the income of the assessee. Feeling aggrieved the assessee filed an appeal before the CIT(A) and the CIT(A) deleted the said disallowance, therefore, the revenue has filed the present appeal along with other appeals before us.

ISSUE NO.1:-

4. Under this issue the revenue has challenged the deletion of the addition to the tune of Rs.8,38,416/- on account of non deduction of TDS u/s.194J of the Act on clearing and forwarding charges of Rs.11,03,217/-. The Assessing Officer was of the view that the

transaction is duly covered by the provision of section 194J of the Act, therefore, the assessee was under obligation to deduct the TDS upon the amount paid under clearing and forwarding charges of Rs.11,03,217/-. Before going further, it is necessary to advert the finding of the CIT(A) on this issue:-

“3.2 Beside this, appellant has argued that as they were paying to CHA agency agent fees as well as reimbursement of various expenses incurred by them for getting the job assigned by the appellant to those CHA agencies, which has reflected clearly in the debit note raised by their CHA agencies and are duly supported by 3rd party bills, whose details are also mentioned in the debit note raised by CHA, the expenses being purely in the nature of reimbursement did not attract TDS provisions and hence TDS were not deducted on the same which are debited in the P & L Account under the head Clearing and Forwarding charges. In view of this I have gone through the ledger account of CHA agencies named Ashish Agency and find that agency charges are billed and further expenses charged are supported by 3rd party bills for which debit note are raised by CHA. These are expenses like Container charges, rent charges and other expenses and others and in turn are supporting by a 3rd

party bill name Evergreen Agency in case of bills raised by Ashish Agency CHA. In view of this I find that appellant's submission is factually supported; that these expenses were reimbursement in nature which however the appellant here has debited under the head Clearing and Forwarding charges along with Agency fee though bill supported while deducting tax on agency charges paid. In view of this I am in agreement with the appellant that there was no need to deduct tax on expense debited in P & L Account which were 100% reimbursement and hence the AO's action of holding the appellant as 'assessee in default' u/s.194J and consequently levy of interest u/s.201(1) for Rs.14,73,580/- for A.Y.2001-02, for Rs.16,56,341/- for A.Y.2002-03 and Rs.25,81,843/- for A.Y.2003-04

5. On appraisal of order passed by the CIT(A) in question, it is quite clear that the CIT(A) understood the nature of the transaction. The appellant paid the agent fees to Custom House Agents (CHA) agency and reimbursement the expenses incurred by them for getting the job assigned by the appellant to those CHA agency which has been reflected clearly in the debit note raised by the CHA agency and duly supported by the 3rd party agency. The details of which have duly been reflected in the debit note raised by the CHA. The

transaction was purely nature of reimbursement and did not attract the TDS provision. The CIT(A) also examined the transaction on Ashish Agency and find that the agency charges was properly dealt and was supported by 3rd party bill for which the debit note was raised by the CHA. The expenses were like container charges, rent charges and other expenses and others and in turn are supporting by a 3rd party bills since the nature of the transaction was only reimbursement therefore, the provision of section 194J of the Act was not attracted. Nothing came into the notice that the transaction was different from the nature which has been described by the CIT(A) in question. Moreover, this ground has also been covered by the [2014] 42 taxmann.com 277 (Bangalore – Trib.) decided by the Income Tax Appellate Tribunal Bangalore Bench in case of Deputy Commissioner of Income Tax, Circle 11(1), Bangalore Vs. Dhaanya Seeds (P.) Ltd. Taking into account of all these facts and circumstances, we are of the view that the CIT(A) has passed the order justifiably and in accordance with law which is not required to be interfere with at this appellate stage. Therefore, we confirm the finding of the CIT(A) Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE NO.2 & 3:-

6. Under these issues the revenue has raised the question about the deletion of addition made by the Assessing Officer u/s.194I of the Act

upon the amount of exhibition purpose. The learned representative of the revenue has argued that the amount paid on account of exhibition charges attract section 194I of the Act, therefore, the assessee was under the obligation to deduct the tax but the assessee did not deduct the tax, therefore, the Assessing Officer has rightly deduct the tax and interest thereon but the CIT(A) has wrongly deleted the said addition. Before, going further, it is necessary to advert the finding of the CIT(A) in question.

- “4. By taking ground no.5, appellant has agitated against holding appellant as ‘assessee in default’ for not deducting TDS u/s.194I on the amount debited under the head Exhibition charges. For the same, appellant has shown details of participation fees i.e. ledger account along with advertisement expenses paid to various parties. I have also cross checked a few. For Example, from the bills charges by Business India for participation in exhibition held in Pragati Maidan, New Delhi, it is noted that appellant has paid entire expenses under the head ‘Participation fee’ which incurred Stall charges, lighting charges, photos, hoardings displays provisions and other facilities. In view of this I am in agreement with the appellant that there was no separate amount paid as rent charge for the space by the appellant as

participation fee is in the nature of composite contract and hence it cannot be held as attracting provisions of sec. 194I. In view of this, levy of interest u/s.201(1) being not sustainable is deleted herewith. The ground no.5 in all these 3 appeals of Rs.2,40,461/-, for A.Y.2001-02, Rs.46,462 A.Y.2002-02 and Rs.4,14,517 for A.Y.2003-04 is allowed.”

7. On appraisal of the above said order the nature of transaction is not in dispute vide which the assessee paid an amount of Rs.11,03,217/- on account of Exhibition charges. The appellant shown the details of participation fees, advertisement fees to various parties. The CIT(A) also discussed the transaction vide which the bill was charged by the Business India for participation in Exhibition held in Pragati Maidan, New Delhi. The participation fees was shown as stall charges, lighting charges, photos, hoardings, displays provisions and other facilities. No separate amount paid by the appellant on account of Exhibition fees. Fees was in nature of composite contract, therefore the same was not attracting in the provision of section 194I of the Act. Anyhow, there is no evidence on record to which it can be assumed that the fees was paid only on account of rent. No distinguishable facts have been placed before us to which it can be assumed that the CIT(A) has wrongly arrived at this conclusion. The CIT(A) has rightly dealt the dealt the issue. In view of the said

circumstances, we are of the view that the learned CIT(A) has passed the order judiciously and correctly which is not require to be interfere with at this appellate stage.

ITA NO.2480/M/14 & ITA NO.2481/M/14 :-

8. The revenue has raised the following grounds:-

- “i. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in giving relief to the assessee by holding that TDS is not deductible on payment made to Custom House Agents (CHA) on account of reimbursement of ‘Clearing and Forwarding Charges’ without properly appreciating the factual and legal matrix of the case as clearly brought out by the A.O. in order u/s.201(1)/201(1A) of the Income Tax Act, 1961.*
- ii. On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in holding that the assessee was under no liability to deduct tax u/s.194I of Income Tax Act 1961 and deleting the non/short deduction under the head ‘Exhibition Charges’ determined by the AO u/s.201(1) of the Act without appreciating the fact that the definition of rent stands amended with effect from 13.07.2006. The AO was correct in holding the assessee as assessee in default within the provisions of section 194I in his order u/s.201(1)/201(1A) of the Income Tax Act, 1961.*
- iii. On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in not appreciating the fact that the AO, while considering the assessee in default u/s.194I of the Act, had only considered the ground rent and not the entire amount of expenses debited under the head ‘Exhibition Charges’.*

ITA No.2813/M/14

“i. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in giving relief to the assessee by holding that TDS is not deductible u/s.194J of the Act on payment made to Custom House Agents (CHA) on account of reimbursement of ‘Clearing and Forwarding Charges’ without properly appreciating the factual and legal matrix of the case as clearly brought out by the A.O. in order u/s.201(1)/201(1A) of the Income Tax Act, 1961.*

12. The matter of controversy involved in ITA No.2479/Mum/2014 is also the same which has been involved in the above mentioned appeals. Since this matter of controversy has already been adjudicated in ITA No. 2479/Mum/2014, therefore we decide the issues in all these appeals on the same terms and conditions as held in the above said appeal and Dismissed all the appeals of the revenue.

7. In the result all the appeals filed by the revenue are hereby Dismissed

Order pronounced in the open court on 25th January, 2017

Sd/-

Sd/-

(G.S.PANNU)

(AMARJIT SINGH)

लेखासदस्य / ACCOUNTANT MEMBER

न्यायिकसदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated :25th January, 2017

MP

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार (Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai